

Important Lessons for Credit Reporting Alternative Payment Arrangements

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When consumers face hard times, creditors will often try to provide alternative payment arrangements to help them continue to make payments on their loans. When payment arrangements deviate from the contractual obligations, there is potential for consumer confusion about what information should appear on their credit reports. A recent case handed down by the U.S. Court of Appeals for the Eleventh Circuit has some important lessons for creditors who offer alternative payment arrangements.

First, the background. In the case of *Felts v. Wells Fargo Bank, N.A.*, 2018 U.S. App. LEXIS 17575 (11th Cir. (M.D.Fla.) June 27, 2018), Ms. Felts sued Wells Fargo, claiming that Wells Fargo failed to conduct a reasonable investigation of her dispute about information on her credit report. Specifically, she claimed that Wells Fargo reported her account as delinquent while she was making \$25 payments on her mortgage loan (not her \$2,200 contractual payment) under a temporary forbearance program offered to consumers who were unemployed. Because she did not make her full contractual payment for several months, her account was reported with a delinquent status. She discovered this when her application for a new mortgage loan was denied months later. Felts submitted disputes through the credit bureaus, but Wells Fargo did not remove the delinquency history.

The U. S. District Court for the Middle District of Florida granted summary judgment in favor of Wells Fargo, finding that Felts failed to show that Wells Fargo reported inaccurate information because the undisputed facts demonstrated that Felts did not make the payments as required under the note. Felts appealed, arguing that the information reported about her was inaccurate because, based on the forbearance plan, she was not required to make her contractual payment. She also argued that Wells Fargo failed to report her account in accordance with the Consumer Data Industry Association's Guidelines. The Eleventh Circuit rejected her arguments.

First, the appellate court found that Wells Fargo was not required to report on every agreement it formed with Felts, but instead was required to furnish information regarding her payment status and history on the original note, which would not change unless that original note was modified. Wells Fargo submitted a letter and record of a conversation with Felts that showed the terms of the loan were not modified and that the account would be considered delinquent even if the forbearance payments were made. Because Felts did not show that the terms of the note were modified, Wells Fargo's credit reporting was not inaccurate. Second, the appellate court rejected Felts claim that CDIA guidelines required Wells Fargo to report a monthly payment of \$25, which would have resulted in her credit report showing that she was current under the forbearance plan. The appellate court found that the CDIA guidelines did not establish that Wells Fargo reported inaccurate information. Specifically, the court

noted that the CDIA guidelines did not preclude Wells Fargo from reporting Felts' account as past due for the months when she did not make full payments under the note.

What are the important lessons?

First, a clearly defined program and clear communication about the program that changes the payment obligations are essential. The court's opinion focused entirely on whether the information was accurate. In reaching the decision that the information was accurate, Wells Fargo submitted evidence in the form of letter agreement and a phone call with Felts where Wells Fargo clearly explained that Felts' loan was not modified and that she would be considered delinquent on her contractual payments if she made only the forbearance payments. So, think about credit reporting implications when creating any type of alternative payment program, document the program, and train staff about the implications on credit reporting.

Second, report according to the terms of the program and be mindful that there may not be clear direction for every alternative payment arrangement in the CDIA guidelines.

Third, retain documents to show clear and consistent communication with the consumer about any alternative payment program, which will help explain the information on the credit report.

Finally, although not discussed in this opinion, make sure that the dispute investigation includes a review of any alternative payment program to ensure that the information on the credit report is consistent with the arrangement.

Although other courts may not agree with the Eleventh Circuit, there is a greater likelihood that a creditor could prevail on a claim that the creditor failed to conduct a reasonable investigation if there is a clearly documented alternative payment program that is considered as part of the dispute investigation.

The court's opinion is available at: <http://media.ca11.uscourts.gov/opinions/pub/files/201616314.pdf>

Lisa DeLessio is a partner in the Maryland office of Hudson Cook, LLP. She can be reached at 410-865-5437 or by email at ldelessio@hudco.com.

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410.684.3200

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